1946. K Legal DEPARTMENT

File No. B.R.T.A. SWR/46

A BRANCH

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Subject :— Appeals to the Bombay Revenue Tribunal from the Sharaya District-

File No. B.R.T.A. SWR/46.

Std. Sectt. Slip 24-B

177/A

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Appeal before the Bombay Revenue Tribunal

Memorandum of Instructions.

1. This is an appeal before the Bombay Revenue Tribunal by the Municipal Borough of Dharwar against the order of the Commissioner, Southern Division, No.A.P.S.R.3708 dated 14th August 1937 declaring the Collector's Order No.C.T.S.131 dated 12th June 1933 ultra vires and holding that the land in dispute viz. old C.T.S.Nos.7016 and 7017 of Dharwar is Government property. Th facts leading to the institution of the appeal are as under:

File IV,p.179

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2. On 31st July 1925, Mr.M.R.Harpanhalli, then Mamlatdar of Dharwar, applied to the Collector of Dharwar for grant of a piece of land adjoining the southern wall of the compound of the Collector's office. On 29th August 1925 he made another application for a grant of the whole strip of land from "the right side of the District Local Board's well upto the southern gate of the Collector's office."

.do... p.27

3. The Collector granted to Mr.Harpanhalli 16530 square feet out of C.T.S.No.113 (which formed part of old C.T.S.No.7016) on payment of occupancy price of Rs.20 per guntha and subject to certain specified conditions. (Vide order No.L.N.D.534 dated 23rd November 1926). The sites thus granted is shown in the sketch dated 15th November 1926.

...do.... p. 101.

File II, p.85.

4. In 1933 however, the Collector cancelled the grant and declared the land to be forfeited to Government for breach of conditions imposed on the grantee and for gross abuse of the concessions given to him as a Government servant. (vide order

No.

No.L.R.D.534 dated 3rd February 1933). File II p.203

5. Meanwhile, on 15th May 1931, the Chief .File III,p.185
Officer of the Dharwar Municipal Borough informed the Collector that the open sites to the east and south of the compound of the Collector's office including the site granted to Mr.Harpanhalli had vested in the Municipality as determined at the time of old City Survey in 1875 and also by reason of the concession granted to Municipalities under Government Resolution Revenue Department No.908 dated 14th February 1874. He therefore requested the Collector to issue necessary inquiries in the matter. File VI p.25

6. On 18th /17th June 1931, the Mamlatdar of Dharwar reported inter alia that the open sites to the east and south of the Collector's office bearing old C.T.S. Nos.7016 and 7017 were held to belong to the Municipality in the original city survey of 1875, but were entered as Government property in the Revision Survey of 1920. He therefore thought that from a reference to the old C.T.S. Records these lands appeared to be the properties of the Municipality. File III, p.187

7. The Irant Officer also thought that since these two C.T.S. numbers were entered as ~~principal~~ Municipal property at the time of the old city survey, the Municipality's claim appeared to be just and he recommended that these two properties should be ordered to be transferred to the Municipality. (Vide No.D.179 dated 1st September 1931). File III,p.205

8. By his order No.C.T.S.131 dated 12th June 1933 do. p 233 the Collector held C.T.S.No.7016 and 7017 to be property of the Municipality and ordered them to be entered in its name.

9. Meanwhile, on 19th May 1933, Mr. Harpanhalli had appealed p.1,F.IV to the Commissioner, C.D., against the Collector's order dated 3rd February 1933. On 19th June 1933 he made a further applica- do p 51

-tion to the Commissioner inviting the latter's attention to the Collector's order dated 12th June 1933 in favour of the Municipality.

File IV,p.93. 10. On 5th March 1935, the Commissioner rejected Mr.Harpanhalli's appeal. On the same day the Commissioner

..do...p.91 addressed a letter No.A.P.S.R.3708 to the Collector in which he raised the question of legal ownership of the land. He held the view that although in 1874 Government had intended the land to vest in the Municipality and ordered a Sanad to be prepared, the land still legally remained vested in Government because the sanad had never been prepared. To solve this difficulty he recommended that terms should be arranged with the Municipality and the land should be handed over to the Municipality on the basis of a sanad in accordance with the orders and subject to the conditions laid down in the Resolution of 1874 and directing further that no retrospective effect should be given to the arrangement. The Commissioner, therefore, advised the Collector to discuss the matter with the President of the Municipality and settle the matter.

11. Pursuant to these instructions, the Collector of Dharwar informed the President that the Resolution of 1874 contemplated a survey of the area and grant to Municipality on certain terms of the areas not reserved, that no action had been taken to have a formal grant in favour of the Municipality and that as the Municipality had not taken any steps to contest the Enquiry Officer's decision given in 1920, its claim was time barred. He stated further that he was prepared to move the Commissioner to cancel the Enquiry Officer's order and the Collector's orders regarding the grant of the site and its forfeiture provided (1) the Municipality agreed to take the site on a fresh sanad on terms of the Government Resolution of 1874 (the Municipality would get the difference between the present N.A. assessment and the old assessment of 1874) and (2) the Municipality gave up all claims to past profits and

allowed the site to continue in Mr.Harpanhalli's possession while claiming only the difference in the assessment (vide No.L.A.W.273 dated 3rd September 1935). File VI,p.13.

12. On 5th December 1935 the President of the Municipality replied to the Collector that the Municipality had agreed to take the site in question on the terms proposed by the Collector and that the Commissioner may be moved to cancel the Enquiry Officer's orders and to direct the land to be entered as Municipal property. The President also forwarded the general Committee's Resolution dated 28th September 1935 in this behalf. ...do..p.159

13. It may be noted here that in his order No.A.P.S.R. 3708 dated 5th March 1935 rejecting Mr.Harpanhalli's appeal the Commissioner had indicated that he would have been prepared to consider the possibility of revising the Collector's order of foffeiture, but for the appellant's unwise step in filing a civil suit against Government. On 27th March 1935 Mr.Harpanhalli represented to the Commissioner that he had filed the suit only as a safeguard against limitation and that he was prepared to withdraw the suit if the matter was favourably considered. After some more correspondence Mr.Harpanhalli unconditionally withdrew his suit on 5th June 1935. On 29th June 1935 the Remembrancer of Legal Affairs advised the Commissioner that as the suit was withdrawn unconditionally there was no objection to settle the dispute with the plaintiff as suggested in paragraph 2 of the Commissioner Memo.No.L.S.T.-35 dated 28th May 1935. File IV,p.95 ...do..p.135 ...do..p.145 File V,p.49

14. Accordingly, on 3rd July 1935 the Commissioner requested the Collector to endeavour to arrange a settlement on the lines suggested in his No.A.P.S.R.3708 dated 5th March 1935 and to report the result.

15. The Collector submitted his report No.L.N.D.534 on 26th January 1937. He stated that the Municipality had agreed to take over the site and receive in future the difference File IV,p.155

between the old and the new assessment without making any claim to rofits derived by Government in the past. He further pointed out that this settlement should be embodied in an order rather than a sanad and that since the site had already been granted to Mr.Harpanhalli on payment of occupancy price and non-agricultural assessment and his possession continued undisturbed, what remained to be given to the Municipality according to the spirit of the concessions of 1874 was the entire non-agricutura assessment, the site having been unassessed in 1874. In return, the Municipality would be bound to continue Mr.Harpanhalli in possession of the land on the conditions imposed by the Collector while making the grant.

File IV,p.179

16. The Commissioner passed his final order No.A.R. S.R.3708 on 14th August 1937. He held that the Collector's order dated 18th June 1933 setting aside the Enquiry Officer order of 1920 was ultra vires and that the land was Government property. He further held that the occupancy price and future assessment upon all waste lands had been alienated to the Dharwar Municipality and as the latter had agreed not to give retrospective effect to the proposal made to it by the Collector, the assessment should thereafter be credited to the Municipal Borough instead of to Government. The Commissioner also pointed out that under rule 126 of the Land Revenue Rules, it was competent to the Collector to restore the land to Mr.Harpanhalli on the con itions proposed by him after taking the requisite agreement from him. Pursuant to these orders the Collector restored the forfeited land to Mr.Harpanhalli on conditions stated in his order No.L.N.D.534 dated 3rd September 1937.

File II,p.309.

17. The Municipality has filed this petition (appeal against the Commissioner's order dated 14th 1937.

Grounds of Defence.

1. The order appealed against was passed on 14th August 1937 whereas the appeal petition is dated 30th April 1943. Under Section 4 of the Bombay Revenue Tribunal Act, the Tribunal can exercise such jurisdiction to entertain appeals as was vested in the Government before 1st April 1937. In this case an appeal could lie to Government under section 204 of the Land Revenue Code and under section 205 Government had no jurisdiction to entertain an appeal after the expiration of ninety days after the date of the decision appealed against. It should therefore be urged that this appeal is prima facie time barred under section 205 of the Land Revenue Code. The appellant has not given any satisfactory reason for not presenting an appeal in time and therefore it cannot be admitted even under section 206 of the Code.

2. The Municipality makes a claim on the lands in dispute on the authority of the Government Resolution, Revenue Department No. 908, dated 19th February 1874. Before considering the Municipality's objection to the Commissioner's order it is necessary to see how far its claim on the basis of that resolution is substantiated. By its Resolution No. 4342, dated 29th July 1873, the Government of Bombay accepted, with certain modifications, the rules made by the Government of India for dealing with unclaimed and Nazul (escheated) lands situated within the Municipal limits in the Bombay Presidency. The first rule laid down the policy of offering to the Municipalities in the Bombay Presidency all Government lands not in the occupation of Government, provided the Municipalities undertook the cost of the survey and settlement under the Bombay Act IV of 1868 and continued to pay the amount of revenue that might be realised from these lands. The second rule reserved to Government, as a precaution against

File VI, p.21

File VI, p.21

alienation of land that might be required for a public purpose, the right to set apart whatever lands might be deemed requisite either for the present or prospective wants of the State and to repossess themselves of any land belonging to the Municipality which might be required for a public purpose on payment of compensation. The third rule prohibited alienation by the Municipality without the sanction of the Local Government. The fourth rule prescribed the mode of application of the price realised by the Municipality by the sale of such property and the fifth and last rule reserved to Government the right to exclude from the operation of these rules any land likely to be required for public purposes. In pursuance of the policy laid down in these rules, the Resolution of 1873 directed the Commissioner to report the names of the cities and towns to which in their opinion the concessions contained in these rules, should be applied.

3. The Resolution of 1873 was followed by the Resolution No. 908 of 1874 on which the Municipality mainly relies. In that Resolution, after reference to the previous Resolution and the Revenue Commissioner, S.D's letter No. 261 of 6th February 1874, Government ordered that the lands enumerated in column 3 of the accompaniment to the letter from the Collector of Dharwar may be made over to the Municipalities of Dharwar and Hubli at the then prevailing rate of assessment. Then in paragraph 4 of the Resolution it was provided as follows :

File VI, p.25.

File VI, p.27.

> "Before Government formally and finally make over their right in these lands it will be advisable to await the completion of the survey. On the completion of the survey, a Sunnud or Deed of Conveyance will be prepared in which Government will specify precisely the rights that have been conferred and those have been reserved, both public and private. The Municipality will then stand in the same relation towards Government as any other alienee to whom a grant has been made."

It is apparent that this Resolution contains only executive instructions regarding the disposal of certain lands in favour of the Municipality of Dharwar and Hubli. By itself that Resolution did not and could not vest in the Municipalities any proprietary interest in the lands under consideration. On the contrary Government contemplated that such interest could vest only after the completion of the survey and on the execution of a Sanad or a deed of conveyance embodying the right and concessions granted in respect of the land. Later on, by another Resolution No. 3111, dated 27th April 1897 Government decided not to have a formal document executed.

File VI,p.29

4. It would therefore seem that although in 1874 Government intended the lands to be vested in the Municipal and had ordered the formal execution of a Sanad on the completion of the survey, no Sanad was ever prepared and consequently no practical effect could be given to the policy laid down by Government in the Resolution aforesaid. Whatever moral justification there may be in the Municipality's claim, the land was not formally and finally made over to it and legally it still remained vested in Government. It was with a view to give practical effect to the Resolution of 1874 that the Commissioner instructed the Collector to arrange terms with the Municipality in accordance with the orders and subject to the conditions imposed in that Resolution. (vide No. A.P.S.R. 3708, dated 5th March 1935).

File IV,p.31.

File VI,p.13.

From the Collector's letter dated 3rd September 1935 and the reply thereto by the President of the Municipality (dated 5th December 1935), the following points are well established :

(1) that the Municipality accepted the position that no formal grant having been made in its favour, the Resolution of 1874 did not by itself vest the land in it.

(2) The Municipality had agreed to take the land on a

fresh Sanad, not to claim any past profits from Government and to allow the land to remain in possession of Mr. Harpanhalli, and receive the difference between the old and the new assessment. All this also proves that the Municipality did not regard itself as the owner of the lands.

It is not therefore open to the Municipality to contend against the Commissioner's order of 14th August 1937 holding the land to be Government property. It should be maintained in this connection, that the Municipality's contentions in paragraph 9(B) of the petition of appeal File VI,p. 1 are incorrect and misleading. It is contended that the order appealed against is ultra vires because the issue before the Commissioner was whether the Collector's order dated 3rd February 1933 forfeiting the grant in favour of Mr. Harpanhalli was correct, and not whether the land belonged to the Municipality or the Government. This contention is wrong. The order appealed against did not relate to Mr. Harpanhalli's appeal of 19th May 1933 which had already been rejected by the Commissioner by his order No. A.P.S.R. 3708, dated 5th March 1935. File IV,p. 93 It rather related to the correspondence beginning with the Commissioner's letter dated 5th March 1935 to the Collector in which the former raised the question of ownership of the land in dispute and ~~declared~~ directed the Collector to settle terms with the Municipality. The order appealed against was passed after consultation and with full concurrence of the Municipality. The argument that the Municipality was not a party to the proceeding is therefore misleading and irrelevant. In only one respect, the order is a departure from the terms proposed by the Collector and accepted by the Municipality i.e. it was decided not to execute a Sanad since the land had been

granted to Mr. Harpanhalli on certain conditions. The non-agricultural assessment was however ordered to be credited to the Municipality and this was according to the spirit of the concessions allowed in the Resolution of 1874. The Municipality can therefore have no grievance against the Commissioner's order.

5. The Municipality has however relied also upon the Collector's order of 12th June 1933 holding the land to be Municipal property. The Commissioner has however rightly set aside this order. It has already been observed that in spite of the Resolution of 1874, the legal title in respect of the land remained vested in Government. Therefore the Enquiry Officer's decision in the City Survey of 1920-21 was correct. Although this order was passed in 1921 the Municipality slept over its alleged rights for an unreasonable length of time and did not make any claim until 13th May 1931. The Enquiry Officer's order was presumably under section 37(2) of the Land Revenue Code. The Municipality ought therefore to have preferred an appeal or filed a civil suit within the prescribed period of limitation as laid down in section 37(3) of the Code. In 1931 both the remedies were time barred and therefore the Collector had no jurisdiction to set aside the Enquiry Officer's order, not, at any rate, without ordering a fresh inquiry under section 37(2). (Vide Case No. 1011(0/165) Selected Decisions of B.R.T. 1942 Part VI, p. 384). Apart from that, the Collector's order is also wrong on merits because the land was the property of Government in spite of the Resolution of 1874.

File III, p.205

6. The last point to be urged before the Tribunal is whether the Commissioner's order directing payment of the future N.A. assessment to the Municipality is correct or otherwise. It must be noticed that the Resolution of 1873 contemplated the

ransfer to the Municipality of all unclaimed or Nazal lands not already appropriated for state purposes or not in the occupation of Government. From the Collector's Report No. L.N.D.A.P. 180, dated 18th August 1945 it appears that the land form part of the compound of the Collector's office and cannot therefore be said to be land not in the occupation of Government. That being so, it cannot be the subject of the concessions allowed in the Resolution of 1874. It should therefore be urged before the tribunal that the Commissioner's order requires to be modified to this extent and that the Municipality's appeal must fail.

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Letter. No. 1147

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 11th February 1946.

To

The Government Pleader,
High Court,
Bombay.

Subject:- Appeal before the Bombay Revenue Tribunal by the Dharwar Borough Municipality in respect of Old C.T.S. Nos. 7016 & 7017 of Dharwar.

With reference to the subject noted above, I have the honour to forward herewith papers of the case and to request you to instruct the Assistant Government Pleader, High Court to appear before the Tribunal and argue the matter on the lines of the accompanying Memorandum of Instructions. The appeal is to be heard in February 1946. The exact date will be communicated to you later on.

Papers of the case in six files which are sent herewith for the perusal of the Assistant Government Pleader, High Court, may be returned to the Revenue Department direct when no longer required.

Issued
USP
11/2

OC.
for Remembrancer of Legal Affairs.

Submitted for signature.
9/2

AS
Who will communicate the date to him?
(after issue, please)
9/2

Submitted with ref to the query.

2. R.D. communicates the dates to the G.P. when they are fixed. In this case the appeal is now set down for hearing in March and the exact date has been communicated to the G.P. by R.D.

3. File in BRTA. Dmt/46.

11/2 AS 11/2

15 HE 23

22-5-46
A.

No. B.R.T. 1883 (O/52),
Bombay Revenue Tribunal,
Bombay Castle, 13th May 1946.

From
The Secretary, Bombay Revenue Tribunal.

To
The President of the Dharwar Municipality.

Subject:- Lands: Dharwar.
Dharwar.
Claim by the Dharwar Municipality to certain------at,

Sir,

With reference to your ~~pap~~ appeal petition, dated 30th April 1943 against the order of the Commissioner, S.D., No.A.P.S.R. 3708, dated 14th August 1937 cancelling the Collector of Dharwar's order and declaring the land claimed by you to vest in Government, I am directed to forward a copy of the Bombay Revenue Tribunal's order, No.O/52, dated 7th March 1946. You may approach the Collector to whom the Tribunal's order is communicated.

Your obedient servant,

P.N. Sawkar

For Secretary, Bombay Revenue Tribunal.

Accompaniments:- (i) Copy of Tribunal's order,

L. D.
12 MAY 1946
A

Copies, with copies of the Tribunal's order, forwarded to:-

the Commissioner C.D., and Member, Bombay Revenue Tribunal,

the Commissioner, S.D.,

Dewan Bahadur P.B. Shingne, Non-official Member, Bombay Revenue Tribunal,

the Collector of Dharwar,

the Government Pleader, High Court, Bombay,

✓the Remembrancer of Legal Affairs,

the Revenue Department, (with reference to Government Letter, No.3724/39/3036(B)B dated 4th March 1946),

With a spare copy of the Bombay Revenue Tribunal's order.

JN/16-5.

4502
22-5-46

Submitted for information

2 File in BRTA Dur/46

SM
22/5 HS

Please see the note at p. 3 of the File and the B.R.T.'s Judgment set up below. The B.R.T. has decided the appeal in favour of the Durban Municipality namely on the ground that the Commissioner had passed the order appealed against without giving to the Municipality an opportunity to be heard. On merits, the Tribunal has held that although the Municipality was grossly negligent in asserting its rights in 1918, 1920, 1927 and 1937 it would be unfair to deprive the public of their rights to the land thereby because of the Municipality's negligence, and that it was the intention of Government to transfer these lands to the Municipality

The judgment may be sent & filed

RLL
25/5/46

A ALR RT 23/5
RCP

28/5/46

17.25

Appeal against order No.A.P.S.R. 3708, dated 14th August 1937, of the Commissioner, S.D.

No.0-52, of 1946.

Read : Bombay, 7th May 1946. /March

Appeal petition, dated 30th January 1943, of the President of the Dharwar Municipality.

Opinion, dated 22nd March 1945, of the Commissioner, C.D., and Member, Bombay Revenue Tribunal.

Opinion, dated 25th March 1945, of Dewan Bahadur P.B.Shingne, Non-official Member, Bombay Revenue Tribunal.

Opinion, dated 7th March 1946, of Sir Navroji Wadia, President, Bombay Revenue Tribunal.

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ORDER.

This is an appeal by the Dharwar Municipal Borough against the order of the Commissioner, S.D., No.A.P.S.R.3708, dated 14th August 1937, cancelling the order of the Collector of Dharwar, No.C.T.S.131, dated 10th/12th June 1933.

2. Notice was issued to Government and the appellant Municipality. At the hearing of the appeal on the 7th of March 1946, Mr.Madbhavi appeared for the appellant Municipality and Mr.Jathar, Assistant Government Pleader, appeared on behalf of Government.

3. The appeal relates to C.T.S.Nos.7016 and 7017 of Dharwar. The present survey numbers of the lands are 107, 108 and 113. By Government Resolution, Revenue Department, No.908, dated 19th February 1874, Government decided to make over their rights in certain waste lands in the city of Dharwar to the Municipality, subject to certain conditions mentioned in the resolution, referred to above, and in Resolution No.4342, dated 29th July 1875. In a City Survey Inquiry, which was made in the following year, 1875, and which was referred to in paragraph 4 of the Resolution of 1874, the lands in dispute were declared to vest in the Municipality and they were entered in the Municipal Property Register. In the Resolution of 1874, Government had stated that before formally and finally making over the rights to the Municipality, it would be advisable to await the completion of the survey, which was then pending, and that on the completion of the survey, a sanad or a deed of conveyance would be prepared in which Government would specify precisely the rights that had been conferred and those that had been reserved, both public and private. By a subsequent Resolution No.3111, dated 27th April 1897, Government, after referring in the preamble to the previous resolution of 1874, decided on full consideration that it would be preferable not to have a formal document executed. The Resolution stated that the concessions granted (to the Municipality) were already set forth on the records and the preparation of a deed or a sanad raised intricate questions which would probably never arise at all, and would create trouble incommensurate with any object likely to be gained.

4. It would, therefore, appear that Government accepted the position which had been already recognised in the survey of 1875 that the lands in dispute had been transferred to the Municipality, and they considered that a sanad or document of transfer was unnecessary. In the resolution of 1897, Government directed the preparation of the schedules and maps of the several classes of lands and their positions These have not been prepared.

5....

5. In 1920-21, a revision survey was made in Dharwar and in the course of this enquiry, the Inquiry Officer declared that these lands, along with others of a similar nature, belonged to Government. The Municipality had been served with a notice of the Inquiry but there was no appearance on their behalf; nor did they appeal within the prescribed time against the decision of the Inquiry Officer.

6. On 14th May 1931, an application was made by the Dharwar Municipality to the Collector for restoration to it of S.Nos.7016, and 7017, the lands now in dispute, and the Collector by his order,No.U.T.S.131, dated 12th June 1933,held that these sites vested in the Municipality. In accordance with this order, possession of the lands was given to the Municipality on the 23rd of September 1933. Prior to this, on the 19th October 1927, a part of the lands in dispute,namely S.No. 113/2, had been granted by Government to one Mr.Harpanhalli on a 50 years lease. In the course of enquiry, it was found that Mr.Harpanhalli had committed a breach of the terms of his grant, and on the 3rd of February 1933, the Collector forfeited the site granted to him. On the 29th of May 1933, Mr.Harpanhalli appealed against this order to the Commissioner, one of the grounds of appeal being that the site granted to him vested in the Municipality and not in Government, and Government had, therefore, no authority to forfeit the lands. In this appeal, the Commissioner made an order on the 14th of August 1937. which is the subject of the appeal before us. In that order,he held that the order of the Collector, setting aside the order of 1920 of the Inquiry officer, was ultra vires, as the Collector had no power to cancell that order. He held that the Collector's order was inoperative, that the Inquiry Officer's order of 1920 held good, and that the lands were Government property.Dealing presumably with the subject matter of the appeal before him, namely Mr.Harpanhalli's land, the Commissioner said that originally it was a waste land, that under the authorities quoted in paragraph 30(a) at page 236 of the Land Revenue Rules, 1921, the occupancy price and future assessment upon all waste lands had been alienated to the Dharwar Borough Municipality, and that as the Borough had agreed not to give retrospective effect to the proposal made to it by the Collector, the assessment which had already been alienated was to be credited to the Municipality instead of to Government under the standing orders,quoted above.

7. It is contended by Mr.Madhbhavi for the appellant Municipality that this order of the Commissioner sets aside in to to the previous orders of the Collector of the 12th of June 1933 in favour of the Municipality, and that since this order was made without notice to the Municipality,it must be set aside.

8. A preliminary objection was raised by Mr.Jathar for Government that the appeal of the Municipality is barred by limitation under section 205 of the Land Revenue Code as it was not filed within 90 days from the decision of the Commissioner. The order of the Commissioner appealed against was made on the 14th of August 1937. The present appeal was filed on the 30th of April 1943. Even allowing for the time taken in obtaining copies of the order,which was considerable,the appeal is still beyond the period of limitation. But section 206 of the Land Revenue Code provides that any appeal may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer or the Provincial Government to whom the appeal is made that he had sufficient cause for not presenting the appeal within such period.

9. The facts of the present case are some what peculiar. On the one hand, it seems to us clear on the merits that it was the intention of Government in 1874 to transfer these lands to the Municipality. This intention was recognised in the original survey of

1875.

1875 ,which presumably on the strength of the Resolution of 1874, hold these lands to be municipal property. That decision of the Inquiry Officer was acquiesced in by Government. The position was again acquiesced in by them in the Resolution of 1892 which was referred to in this Resolution and it was expressly stated that no documents of transfer were necessary. In spite of this, in the Revision Survey of 1920-21, the lands were entered as Government property. On the other hand, in 1912, and again in 1927, after the survey of 1920-21, portions of the lands in dispute were leased by Government, the lease of 1927 being for a period of 50 years. There appears to have been extraordinary negligence on the part of the Municipality in asserting and safeguarding its rights. Apparently, no steps were taken to obtain possession of the lands which had been granted to it, in 1874, since otherwise it is difficult to understand how Government in 1912 leased temporarily a portion of land out of S.No.7017, and granted a lease of another part of the land in 1927. No protest was made on either occasion against the grant. In the Revision Survey Inquiry of 1920-21, the Municipality failed to put forward its claims, although notice of the enquiry was given to it, and it also failed to appeal in time against the decision of the Inquiry Officer. It was not till 10 years after the decision that an application was made to the Collector to enter the lands in the name of the Municipality. If it were not for the fact that the rights of the public are involved, and we are extremely unwilling that those rights should suffer because of the negligence of the Municipality, we would not have interferred in this case. It may be mentioned that two other lands, C.T.S.Nos. 7015 and 7018, which had been similarly transferred to the Municipality under the Resolution of 1874, are entered in the name of the Municipality and Government have acquiesced in the position.

The Government Resolution of 1874

10. The Commissioner in setting aside the order of the Collector of the 12th of June 1933, which in turn set aside the order of the Inquiry Officer, held that the order of the Collector was ultra vires and that he had no authority to make such an order. We presume that the reference to the order of the Collector as ultra vires merely means that the order had been made along after the period of appeal had expired. An appeal would lie to the Collector from the order of the Inquiry Officer if it were made in time. But under section 206 of the Land Revenue Code the Collector had the power to allow an appeal even after the period of limitation, if the appellant satisfied him that he had sufficient cause for not presenting the appeal within such period. The Collector must have admitted the appeal in the exercise of the discretion given to him under section 206 of the Land Revenue Code.

11.. The order made by the Commissioner is in our opinion unsustainable . That order was made in connection with an appeal by Mr.Harpanhalli against the forfeiture of his land, S.No.113/2. The other lands, which are the subject of the present appeal, namely, C.T.S.No.107, 105.113/1 and 113/3 were not the subject of the appeal before the Commissioner at all..Nor was the order of the Collector directly under appeal. If the Commissioner wanted to go into the question of the ownership of all the survey numbers, and not merely of the portion granted to Mr.Harpanhalli, a notice to the Municipality, in whose favour the Collector's order was made, was absolutely necessary. From the correspondence which took place between the revenue authorities and the Municipality, it appears that the Municipality was asked with regard to Mr.Harpanhalli's land whether it was prepared to give up its right to claim past rent. The Municipality agreed to do so, and this fact is referred to in the Commissioner's order. But the Municipality was nowhere asked whether it had anything to urge why the Collector's order in its favour should not be set aside.

In....

In our opinion, the Commissioner was not justified in making an order against the Municipality in regard to the land in dispute without giving it an opportunity of being heard.

12. On the merits, we think that although there has undoubtedly been very serious negligence onthe part of the Municipality in asserting its rights in 1912, in 1928, in 1927 and again in 1937, it would be unfair to deprive the public of their rights to the land merely because of the negligence of the Municipality in asserting them. The record in our opinion leaves no doubt that it was the intention of Government in 1875, and for a long time thereafter, to transfer these lands to the Municipality. In September 1933, as a result of an order made by the Collector, the possession of the lands was given to the Municipality, and that possesion presumably still continues. So far as the land granted to Mr.Harpanhalli is concerned, the Commissioner's order sets out the manner in which it is to be dealt with. The Municipality has agreed not to claim past assessment, and the Commissoner has directed that in future the assessment on the land is to be credited to the Municipality instead of to Government. As regards the other lands, which are the subject matter of this appeal, we set aside the Commissioner's order andrestore that of the Collector.

N.J.Wadia-
President,
Bombay Revenue Tribunal.

J.M.Corin.
Commissioner, C.D., and Member,
Bombay Revenue Tribunal.

P.B.Shingne
Non official Member, Bombay Revenue Tribunal.

3+ 21

Office of the R.L.A.

The only grievance of the appellant is that the lands should have been granted to him since he had offered a higher occupancy price. The Revenue Officers have declined his request and have already granted the lands to Mr. V.H. Joshi. The Bombay Revenue Tribunal has consistently held that the grant of land on payment of occupancy price is a matter of administrative discretion with the revenue officers and not a revenue case within the Tribunal's jurisdiction (see selected Decisions of B.R.T. (1940) Part II p.40; Part IV, p.134; (1941) Part I, p.72; Part III, p.152 and (1942) part V, p.324). "Under the Land Revenue Code and the Rules, it is open to the Collector to sell the land by public auction or give it out by private sale to any individual on proper terms fair to him as well to Government. No hard and fast rules for the exercise by Collector of his discretion can be laid down by the Tribunal. And where the Collector has considered the question of public auction or private sale and has decided in favour of one or the other, the Tribunal should not as a rule consider the matter denove and substitute its own opinion for that of the Collector." (Case No.478 (O/451) Selected Decisions 1940 Part IV p.134). The case is therefore outside the jurisdiction of the Tribunal.

2. A written statement (in duplicate) to be filed in this case is appended.

Subd. for signature.

2. Para 1 of the reply is based on last para of A.G.'s note 8 28/2/46 & is for approval.

oc RR

For Remembrancer of Legal Affairs.

U.O.R. to R.D. No. 6097 dated 6th September 1946.
x with case pp.

U.O.R. 5/9

A.G. RW 6/9/46

A.A.L.R.

Issued 6/9

The following is the written statment on behalf of Government.

1. This appeal involves the question of grant of Government land to private parties on payment of occupancy price.

2. This Tribunal has consistently held that the grant of land on such terms is a matter of administrative discretion with the Revenue Officers and is not a Revenue case within the Tribunal's jurisdiction. Government contends that this is also not a revenue case and the Tribunal has no jurisdiction to entertain this appeal.

3. Apart from the question of jurisdiction, the Tribunal ha held that the disposal of Government lands being a matter within the competence of the revenue officers, the Tribubal should not ordinarily interfere with the exercise by the revenue officers of their discretion except for very grave cause shown. Under the Land Revenue Code and Rules it is open to those officers to sell the land by public auction or give it out by private sale to any individual on proper terms. (Selected Decisions 1940, Part IV p. 134).

4. Government therefore submits that the appeal is incompetent and must be dismissed.

3+ 21

Office of the R.L.A.

The only grievance of the appellant is that the lands should have been granted to him since he had offered a higher occupancy price. The Revenue Officers have declined his request and have already granted the lands to Mr. V.H. Joshi. The Bombay Revenue Tribunal has consistently held that the grant of land on payment of occupancy price is a matter of administrative discretion with the revenue officers and not a revenue case within the Tribunal's jurisdiction (see selected Decisions of B.R.T. (1940) Part II p.40; Part IV, p.134; (1941) Part I, p.72; Part III, p.152 and (1942) part V, p.324). "Under the Land Revenue Code and the Rules, it is open to the Collector to sell the land by public auction or give it out by private sale to any individual on proper terms fair to him as well to Government. No hard and fast rules for the exercise by Collector of his discretion can be laid down by the Tribunal. And where the Collector has considered the question of public auction or private sale and has decided in favour of one or the other, the Tribunal should not as a rule consider the matter denove and substitute its own opinion for that of the Collector." (Case No.478 (O/451) Selected Decisions 1940 Part IV p.134). The case is therefore outside the jurisdiction of the Tribunal.

2. A written statement (in duplicate) to be filed in this case is appended.

Subd. for signature.

2. Para 1 of the reply is based on last para of A.S.'s note 8 28/6/1464 is for approval.

RK

For Remembrancer of Legal Affairs.

U.R. to R.D. No. 6097 dated 6th September 1946.

x with case pp.

20.P. 6/9

A.S. Rw 6/9/46

A.A.L.R.

Issued 6/9

~~25~~ 23

No. B.R.T. 2169 (O/123).
Bombay Revenue Tribunal.
Bombay Castle, 11th September 1947.

From

The Secretary, Bombay Revenue Tribunal.

To

Jayarayachar Gururayacher Kallapur, Esquire.

Subject:- Lands: Dharwar;
Savikeri, taluka Hangal.
Disposal of certain --- at,

Sir,

With reference to your appeal petition, dated 3rd September 1944 against the order of the Commissioner, S.D., No. L.N.D.A.P. 934, dated 23rd December 1943, I am directed to forward a copy of the Bombay Revenue Tribnal's order, No. O/123, dated 8th August 1947.

2. The Commissioner's order forwarded, in original, with the appeal petition is returned herewith.

Your obedient servant,

For Secretary, Bombay Revenue Tribunal.

10985
19-9-47

Accompaniments:- (1) Copy of Tribunal's order,
(2) Commissioner's order in original.

Copies, with copies of the Tribunal's order forwarded to -

the Commissioner, N.D., and Member, Bombay Revenue Tribunal
Dewan Bahadur P.B.Shingne, Non-official Member, Bombay Revenue Tribunal,
the Commissioner, S.D.,
the Collector of Dharwar,
the Revenue Department, (with reference to Government Letter No. S. 128/25496-B, dated 13th June 1947),
the Remembrancer of Legal Affairs.
With a spare copy of the Bombay Revenue Tribunal's order.

L.D.
17 SEP 1947

/9.

10985

19-9-47

Submitted with pps for information.

2 File in O.B.R.T.A. Dur/46.

19

A.S.

B

2/5

Appeal against order No. L.N.D. MIP.1934, dated 23rd December 1943, of the Commissioner, S.D.

No. O. - 123 of 1947,
18th July 1947
Bombay, 8th August 1947.

Read:

Appeal petition, dated 3rd September 1944, of Mr. Jayarayachar Gururayachar Kellapur of Hangal, district Dharwar.

Opinion, dated 18th July 1947, of Sir Navroji Wadia, President, Bombay Revenue Tribunal, Commissioner, N.D., and Member, Bombay Revenue Tribunal, and Dewan Bahadur P.B.Shingne, Non-official Member, Bombay Revenue Tribunal.

Order.

This is an appeal by Mr. Jayarayachar Gururayachar Kellapur of Hangal, district Dharwar, against the order of the Commissioner, S.D., dated 23rd December 1943, setting aside the order of the Collector, dated 1st September 1942, and restoring that of the Assistant Collector, dated 21st February 1942, by which Survey Nos. 32, 33, 34, 35 and 36, measuring 33 acres and 17 gunthas and assessed at Rs. 77/- of Savikeri in Hangal taluka of the Dharwar district were granted on restricted and impartible tenure on payment of occupancy price of Rs. 10/- per acre.

2. The appeal was fixed for hearing today. There was no appearance either on behalf of the appellant Jayarayachar or on behalf of the respondent Virupax Hemmant Joshi. Government also did not appear at the hearing; they have put in a written statement.

3. Mr. V.H.Joshi and Mr. S.K.Deshpande of Hangal had applied to the Mamlatdar on the 22nd of January 1942 for a grant of the survey numbers on the new tenure for cultivation. Subsequently, Mr. Deshpande, who was the Kulkarni of the village, withdrew his application and requested that the land should be granted to Mr. Joshi. The Circle Inspector made enquiries and reported that there was sufficient land in the village for grazing and for the remuneration

of the Inferior Village Servants and that there was no demand for the land. He, therefore, recommended grant of the land to Mr. Joshi. The Mamlatdar recommended to the Prant Officer that the land should be granted to Mr. Joshi at the rate of Rs. 10/- per acre and on the 21st of February 1942, the Prant Officer sanctioned the grant on the terms mentioned above. Meanwhile, on the 16th of February 1942, the appellant had also applied to the Prant Officer for a grant of the very survey number, stating that he was willing to pay occupancy price of Rs. 15/- per acre and that the lands were adjacent to his lands in the village. This application was forwarded by the Prant Officer to the Mamlatdar on the 21st of February 1942, the very day on which he sanctioned the grant of the same land to Mr. Joshi. Mr. Jayarayachar, the appellant, appealed to the Collector, who set aside the Prant Officer's order on the 1st of September 1942, and directed that the lands should be sold by public auction. Mr. Joshi, the grantee, appealed to the Commissioner, who cancelled the Collector's order and restored that of the Prant Officer. Against this order, Mr. Jayarayachar has come in appeal to this Tribunal with a request that the lands should be granted to him at the rate of Rs. 15/- per acre or that they should be sold by public auction.

4. Government in their written statement have contended that this being a case of a grant of land, according to the decisions of the Tribunal up to now, this is not a revenue case within our jurisdiction. We have consistently held that the question whether land should be granted or not is a matter of discretion and not a revenue case within our jurisdiction. But the question here is slightly different. The question is not whether land should be granted or not but whether, after the revenue officers had decided to grant it, the procedure followed in disposing of it was proper, and whether the land should have been sold by public auction or by private sale. Government revenue is affected since the lands in this case have been granted at a fixed price of Rs. 10/- per acre, when in the opinion of the Collector -----

Collector, the sale statistics in the village show that similar lands had fetched as much as Rs. 150/- per acre. In the matter of the appeal by Mr. D.G.Hazare and another (Case No. 478 (9/45), dated 17th October 1940, part IV of 1940, p. 134), where the same question arose, this Tribunal assumed, without deciding, that it was a revenue case within their jurisdiction and decided it on them merits. In coming to this decision they made the following remarks:-

> " .... It appears to us that the disposal of lands being a matter within the competence of the Collector, we should not ordinarily interfere with the exercise by the Collector of his discretion except for very grave cause shown".

In our opinion, we have jurisdiction to decide this appeal.

5. The grounds on which the Collector reversed the order of the Assistant Collector were that the lands adjoined those of the appellant, that the officiating Kulkarni of the village, Mr. Deshpande was the joint applicant with Mr. Joshi, though he subsequently withdrew his application, and had purposely suppressed the fact that the lands adjoined the lands of the appellant and had reported that there was no demand for the lands, though the sale statistics showed that lands in the village had fetched as much as Rs. 150/- per acre.

6. It appears from the papers that Mr. Joshi to whom the lands were granted by the Assistant Collector, belongs to an advanced class and is a resident of Hangal. He had taken the survey numbers on leased in the year 1942-43 but the Record of Rights shows that the had leased them at a higher rate and had made profits. Mr. Joshi is not, therefore, an agriculturist; he is by profession a merchant; nor is he a resident of the village in which the lands are situated. One of the grounds on which the Commissioner confirmed the Assistant Collector's order granting the land to Mr. Joshi was that he had spent some amount over the improvements of the land. Considering the facts of the case, since Mr. Joshi had taken the lands on lease for one year and had sublet them to others, it is impossible to believe that he could personally have spent any appreciable amount on the improvement of the land.

7. -----

7. In our opinion, the order passed by the Assistant Collector was clearly wrong and the Collector was fully justified in setting it aside and directing that the lands should be disposed of by auction. Although the appellant, Mr. Jayarayachar, is the holder of land adjacent to the land in dispute, since ~~the~~ the lands to be granted form a large and compact block of 33 acres and 17 gunthas, we see no reasons why the appellant should be given preference merely because he happens to ~~be~~ be the occupant of the adjoining land.

8. We set aside the order made by the Commissioner and restore that of the Collector, directing that the lands should be sold by public auction.

N.J.Wadia,
President,
Bombay Revenue Tribunal.

U.M.Mirchandani,
Commissioner, N.D., and
Member, Bombay Revenue Tribunal.

P.B.Shingne,
Non-official Member,
Bombay Revenue Tribunal.